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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/537,065

06/01/2005

Hubert Cecile Francois Martens

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

AGUSTIN, PETER VINCENT

ART UNIT

PAPER NUMBER

2627

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/537,065	<b>Applicant(s)</b> MARTENS ET AL.	
	<b>Examiner</b> P. Agustin	<b>Art Unit</b> 2627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7,9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

1. This application is a 371 of PCT/IB03/50019, filed on November 6, 2003.
2. Claims 1-7, 9 & 10 are currently pending.

#### *Double Patenting*

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. The following are provisional obviousness-type double patenting rejections.
5. Claims 1, 2, 9 & 10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7 & 9 (hereafter copending claims 1, 7 & 9) of copending Application No. 10/536,640 in view of Onishi et al. (JP 02078031A).

In regard to claims 1, 9 & 10, copending claims 1, 7 & 9 recite all claimed features. Additionally, copending claim 1 (copending claim 7 has similar features) recites obtaining a light beam having a substantial oval spot profile using "means for reducing the numerical aperture of

said optical means in the direction orthogonal to the information recording direction”. However, copending claims 1 & 7 do not recite: in regard to claims 1 & 9, obtaining a light beam having a substantial oval spot profile using “astigmatism”; and in regard to claim 2, that said means for influencing the light beam introduces astigmatism into the light beam.

Onishi et al. disclose: in regard to claims 1 & 9, obtaining a light beam having a substantial oval spot profile using astigmatism (see purpose); and in regard to claim 2, introducing astigmatism into the light beam (see purpose). It would have been obvious to one of ordinary skill in the art at the time of invention to have applied these teachings of Onishi et al. to the recording apparatus of the copending claims, the motivation being to reduce the number of parts (see last line of constitution).

6. Claims 3 & 4 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending claims 1, 7 & 9 of copending Application No. 10/536,640 and Onishi et al., and further in view of Yasuda et al. (US 6,661,415).

The copending claims and Onishi et al. do not recite: in regard to claim 3, that said means for influencing the light beam comprises a liquid crystal cell; and in regard to claim 4, that said liquid crystal cell has a cylindrical shape.

Yasuda et al. disclose: in regard to claim 3, a means for influencing a light beam comprising a liquid crystal cell (Figure 12B); and in regard to claim 4, that said liquid crystal cell has a cylindrical shape (column 9, lines 64-67). It would have been obvious to one of ordinary skill in the art at the time of invention to have applied the teachings of Yasuda et al. to the recording apparatus of the copending claims and Onishi et al., the motivation being to more precisely correct spherical aberration (column 10, lines 27-30).

7. Claim 5 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending claims 1, 7 & 9 of copending Application No. 10/536,640 and Onishi et al., and further in view of Cohen (US 4,609,813).

The copending claims and Onishi et al. do not recite: in regard to claim 5, that said means for influencing the light beam comprises a cylindrical lens.

Cohen discloses a means for influencing a light beam comprising a cylindrical lens (see abstract). It would have been obvious to one of ordinary skill in the art at the time of invention to have applied the teachings of Cohen to the recording apparatus of the copending claims and Onishi et al., the motivation being to eliminate focus offset errors caused by beam ellipticity (see abstract).

8. Claims 6 & 7 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over copending claims 1, 7 & 9 of copending Application No. 10/536,640 and Onishi et al., and further in view of Morimoto (JP 61-248253).

The copending claims and Onishi et al. do not recite: in regard to claim 6, that said means for influencing the light beam comprises focus control means for controlling a focus position of focal lines of the light beam, said light beam having an intrinsic astigmatism, such that a defocus is introduced during recording of information; and in regard to claim 7, that said focus control means adds an offset to a focus error signal used for keeping the light beam into focus during recording of information.

Morimoto discloses: in regard to claim 6, focus control means for controlling a focus position of focal lines of a light beam, said light beam having an intrinsic astigmatism, such that a defocus is introduced during recording of information (see constitution); and in regard to claim

7, that focus control means adding an offset to a focus error signal used for keeping the light beam into focus during recording of information (see constitution). It would have been obvious to one of ordinary skill in the art at the time of invention to have applied the teachings of Morimoto to the recording apparatus of the copending claims and Onishi et al., the motivation being to suppress return light inducing noise and to obtain a high CN ratio (see purpose).

***Allowable Subject Matter***

9. Claims 1-7, 9 & 10 would otherwise be allowable over the prior art of record in light of the applicant's amendment to independent claims 1 & 9.

***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Agustin whose telephone number is 571-272-7567. The examiner can normally be reached on Monday-Thursday 8:30-6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on 571-272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Peter Vincent Agustin*  
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Patent Examiner  
Art Unit 2627